



State of New Jersey

DEPARTMENT OF HEALTH AND SENIOR SERVICES

PO BOX 360

TRENTON, N.J. 08625-0360

JAMES E. MCGREEVEY
Governor

www.state.nj.us/health

CLIFTON R. LACY, M.D.
Commissioner

April 19, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alireza Maghazehe
Chief Executive Officer
Capital Health System at Fuld
750 Brunswick Avenue
Trenton, New Jersey 08638

Re: Notice of Proposed Assessment
of Penalties
Facility ID# 11102

Dear Mr. Maghazehe:

The Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., is intended to ensure that all licensed New Jersey health care facilities are of the highest quality. In furtherance of this objective, N.J.S.A. 26:2H-5 authorizes the Commissioner of Health and Senior Services to inquire into health care services and the operation of health care facilities and to conduct periodic inspections of such facilities with respect to the fitness and adequacy of the premises, equipment and personnel.

Department of Health and Senior Services (Department) staff visited your facility on June 10, 11 & 12, 2003, for the purpose of conducting a licensure survey. The survey report revealed that Capital Health System at Fuld (Capital Health-Fuld) was in violation of certain licensure requirements in N.J.A.C. 8:43G, Hospital Licensing Standards. The following are those violations for which a monetary penalty is imposed against Capital Health-Fuld:

1. N.J.A.C. 8:43G-16.2(b) stipulates that "All physician orders for medication, treatment, and restraints shall be in writing. All orders for restraints shall be made in accordance with requirements at N.J.A.C. 8:43G-18.4(c) through (e)," and

N.J.A.C. 8:43G-18.4(c) stipulates that "Except in an emergency, a patient shall be physically restrained only after the attending physician or another designated

physician has personally seen and evaluated the patient and has executed a written order for restraint.” The survey report revealed the following:

Based on staff and patient interviews and a review of Medical Record #22, the facility failed to ensure that all orders for restraints were executed by the physician, as evidenced by:

- a. On June 3, 2003 at 5:20 PM, soft 4 point restraints were ordered for 4 hours for medical reasons. Locked leather restraints were applied for behavioral reasons, per the Restraint Documentation. The telephone order for the locked leather restraints was not signed by the physician.
 - b. On June 4, 2003 at 1:30 AM, 4 point locked leather restraints were ordered for 4 hours. The telephone order for the 4 point locked leather restraints was not signed by the physician.
 - c. On June 4, 2003 at 9:30 AM, 4 point locked leather restraints were ordered for 4 hours. The order for the 4 point locked leather restraints was not signed by the physician.
 - d. On June 5, 2003 at 1:30 PM, 4 point locked leather restraints were reordered for 4 hours. The telephone order for the 4 point locked leather restraints was not signed by the physician.
 - e. On June 6, 2003 at 5:30 AM, 4 point locked leather restraints were reordered for 4 hours. The telephone order for the 4 point locked leather restraints was not signed by the physician.
 - f. On June 6, 2003 (no time was written, on back of the 9:30 AM order), 4 point locked leather restraints were reordered for 4 hours. The telephone order for the 4 point locked leather restraints was not signed by the physician.
 - g. On June 7, 2003 at 1:30 AM, 4 point locked leather restraints were reordered for 4 hours. The telephone order for the 4 point locked leather restraints was not signed by the physician.
 - h. On June 9, 2003 at 5:30 AM, 4 point locked leather restraints were reordered for 4 hours. The written order for the 4 point locked leather restraints was not signed by the physician.
2. N.J.A.C. 8:43G-18.4(b)1 stipulates that “The hospital shall have written policies and procedures regarding the use of physical restraints that are reviewed at least once every three years, revised more frequently as needed, and implemented. They shall include a protocol for the use of alternatives to physical restraints, such as staff or environmental interventions, structured activities, or behavioral management. Alternatives shall be utilized whenever possible to avoid the use of restraints.” The survey report revealed the following:

Based on staff and patient interviews and a review of Medical Record #22, the facility failed to ensure that alternative means were utilized to avoid the use of restraints. Between June 3, 2003 at 9:30 PM and June 11, 2003 at 7:15 AM, the patient was in 4 point locked leather restraints (165.75 hours) and less than 4

point restraints (18 hours) for a total of 183.75 hours. There was no documented evidence of attempts to use alternative means to avoid the use of restraints.

3. N.J.A.C. 8:43G-18.4(b)2 stipulates that "The hospital shall have written policies and procedures regarding the use of physical restraints that are reviewed at least once every three years, revised more frequently as needed, and implemented. They shall include a protocol for the use and documentation of a progressive range of restraining procedures from the least restrictive to the most restrictive." The survey report revealed the following:

Based on staff and patient interviews and a review of Medical Record #22, the facility failed to ensure that progressively less restrictive forms of restraints were utilized. Between June 3, 2003 at 9:30 PM and June 11, 2003 at 7:15 AM, other than 18 hours during which restraints less than 4 points were utilized, the patient was in 4 point locked leather restraints for 165.75 hours. There was no documented evidence of attempts to use progressively less restrictive forms of restraints.

N.J.S.A. 26:2H-14 allows for the imposition of a penalty of not more than \$5,000 for each day that a facility violates any rule or regulation as it pertains to the care of patients or physical plant standards. Therefore, in accordance with N.J.S.A. 26:2H-14, you are hereby assessed a penalty of \$5,000, calculated as follows:

\$2,500 for the violations of N.J.A.C. 8:43G-16.2(b) and 18.4(c) as provided for at N.J.A.C. 8:43E-3.4(10).

\$2,500 for the violations of N.J.A.C. 8:43G-18.4(b)1 and 18.4(b)2 as provided for at N.J.A.C. 8:43E-3.4(10).

A certified check or money order, made payable to "Treasurer, State of New Jersey" must be submitted within 30 days of the date of this letter. In accordance with N.J.A.C. 8:43E-3.5(c), failure to pay this penalty may result in a summary civil proceeding in the Superior Court of New Jersey in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq., or placement of Capital Health-Fuld on provisional licensure status. Payment should be forwarded to:

New Jersey Department of Health and Senior Services
Certificate of Need and Acute Care Licensure Program
P.O. Box 360, Room 403
Trenton, New Jersey 08625-0360
ATTN: Mr. John A. Calabria

Pursuant to N.J.S.A. 26:2H-13, you may contest this proposed penalty assessment by giving written notice to this Department of your desire for a hearing before the Office of Administrative Law. Such notice must be accompanied by a written answer addressing each of the violations. This penalty may be held in abeyance until such time as the hearing has been concluded and a final decision rendered. A request for such a hearing must be submitted to this office within 30 days after mailing, and should be forwarded to:

New Jersey Department of Health and Senior Services
Office of Legal and Regulatory Affairs
P.O. Box 360, Room 805
Trenton, New Jersey 08625-0360
ATTN: Ruth Charbonneau, Esq.

If you have any questions concerning this matter, please do not hesitate to contact Mr. John A. Calabria, Director, Certificate of Need and Acute Care Licensure Program, at (609) 292-8773.

Sincerely,

Marilyn Dahl
Deputy Commissioner
Health Care Quality and Oversight

c: Ms. Thornton
M. Raksa, DAG
R. Charbonneau, Esq.
Ms. Riley
Mr. Calabria
Ms. Gibson
Mr. Kobylarz
Ms. Brown
Mr. Greenberg
Ms. Hall